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EXAMINER	
LEE, PHILIP C	

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/884,674	CHU ET AL.	
	Examiner	Art Unit	
	Philip C Lee	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 June 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-30 are presented for examination.

Claim Rejections – 35 USC 112

2. Claims 6, 7, 15-17, 20, 24 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following terms lack proper antecedent basis:

i. the measuring – claims 6 and 7.

ii. the latency speed – claim 15.

b. Claim language in the following claims is not clearly understood:

i. As per claim 15, line 6-7, it is unclear if the latency is the same as the throughput speed in claim 7, lines 7-8, since they are both defined as the difference between the receipt time and the transmission time.

ii. As per claim 20, lines 7-8, it has the same uncertainty as in claim 15, lines 6-7.

iii. As per claim 24, lines 6-9, it has the same uncertainty set forth in claim 15, lines 6-7.

iv. As per claim 29, line 2, it is unclear if a message is being transmitted to a download source [i.e. a transmitter of a message is transmitting a message]; Line 3, it is uncertain if a recorder is recording time.

Claim Rejections – 35 USC 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 5, 6, 8, 10, 12, 14, 18 and 25-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Emens et al, U.S. Patent 6,606,643 (hereinafter Emens).

6. As per claim 1, Emens taught the invention as claimed for managing a plurality of sources comprising:

determining an empirical measurement of a performance of each of the plurality of sources (col. 3, lines 47-58); and

selecting a source in reference to the empirical measurement of the performance of each of the plurality of sources (col. 3, line 66-col. 4, line 3).

7. As per claims 8, 10 and 18, Emens taught the invention as claimed for managing a plurality of sources, wherein executable instructions capable of directing a processor to perform:

determining an empirical measurement of a throughput speed of each of the plurality of sources (col. 3, lines 47-58); and

selecting a source in reference to the empirical measurement of the throughput speed of each of the plurality of sources (col. 3, line 66-col. 4, line 3). (Note that the throughput speed is interpreted as the throughput time (i.e. roundtrip time) as defined according to the specification, page 17, lines 1-7, if the size of the transmission and response is equal for each source tested.)

8. As per claim 12, Emens taught the invention as claimed for managing a plurality of sources which, when executed by a processor, cause the processor to perform the method of:

determining an empirical measurement of a download speed of each of the plurality of sources (col. 3, lines 27-58); and

selecting a source in reference to the empirical measurement of the download speed of each of the plurality of sources (col. 3, line 66-col. 4, line 3). Note that the download speed could be the throughput speed (i.e. or could be the throughput time if the size of the transmission and response is equal for each source tested according to the specification on page 17, lines 1-7) according to the specification, page 13, lines 1-4.

9. As per claim 25, Emens taught the invention as claimed for managing sources in a peer-to-peer network (i.e. data can be exchange freely between two computer) (col. 4, lines 19-22) comprising:

a processor (inherently comprised); and

software means operative on the processor for determining an empirical measurement of a throughput speed of each of the plurality of sources and selecting a source in reference to the empirical measurement of the throughput speed of each of the plurality of sources (col. 3, lines 47-58; col. 3, line 66-col. 4, line 3).

10. As per claim 28, Emens taught the invention as claimed comprising:

a determiner (e.g. the calibration applets) of an empirical measurement of a throughput speed of each of the plurality of download peer-to-peer network sources (i.e. data can be exchange freely between two computer) (col. 4, lines 19-22; col. 7, lines 44-54); and

a selector (e.g. the calibration manager) of a source in reference to the empirical measurement of the throughput speed of each of the plurality of peer-to-peer network sources (col. 7, lines 44-54).

11. As per claims 5, 14 and 27, Emens taught the invention as claimed in claims 1, 12 and 25 above. Emens further taught wherein the performance comprises latency (col. 3, lines 55-56).

12. As per claim 6, Emens taught the invention as claimed in claim 5 above. Emens further taught wherein the measuring further comprises:

measuring the elapsed time of a transmission involving each of the plurality of sources (col. 3, lines 56-58).

13. As per claim 26 Emens taught the invention as claimed in claim 25 above. Emens further taught wherein the throughput speed further comprises a round-trip time (col. 5, lines 48-49).

14. As per claim 29, Emens taught the invention as claimed in claim 28 above. Emens further taught comprising:

a transmitter (e.g. the calibration applets) of a message to a download source of the plurality of sources (col. 3, lines 49-51);

a recorder (e.g. timer) of the time of a transmission of a message, operably coupled to the transmitter (col. 5, lines 42-45);

a receiver of a response to the transmission from the source, operably coupled to the transmitter (col. 3, lines 51-53);

a recorder (e.g. timer) of the time of receipt of a response (col. 5, lines 42-45); and

a determiner (e.g. the calibration manager) of the throughput speed of the source, from the difference between the receipt time and the transmission time (col. 3, lines 56-58; col. 5, lines 42-49).

Claim Rejections – 35 USC 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claims 2, 3, 7, 11, 13, 15, 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens in view of "Official Notice".

17. As per claims 2 and 3, Emens taught the invention as claimed in claim 1 above. Emens did not specifically teach obtaining the empirical measurement of a throughput speed from different sources. "Official Notice" is taken for the concept of obtaining data from different sources is known and accepted in the art (e.g. data mining). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to obtain data from different sources as a matter of design choice. (Note that the throughput speed is interpreted as the

throughput time (i.e. roundtrip time) as defined according to the specification, page 17, lines 1-7, if the size of the transmission and response is equal for each source tested.)

18. As per claims 7, 11, 13 and 20, Emens taught the invention as claimed in claims 5, 10, 12 and 18 above. Emens further taught wherein the measuring further comprises for each of the plurality of sources.

recording transmission time from the current time (col. 5, lines 42-45);

initiating a transmission to a download source of the plurality of sources (col. 3, lines 49-51);

receiving a response to the transmission from the source (col. 3, lines 51-53);

recording the receipt time from the current date (col. 5, lines 42-45); and

determining the throughput speed of the source from the difference between the receipt time and the transmission time (col. 3, lines 56-58; col. 5, lines 42-49).

19. Emens did not teach including a date with the transmission time or the receipt time. "Official Notice" is taken for the concept of recording the time and date is known and accepted in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to include the transmission date and receipt date because by doing so it would increase the alertness of Emens's system by allowing a user to monitor the transaction with the external network.

20. As per claim 15, Emens taught the invention substantially as claimed for managing a plurality of sources comprising:

storing transmission time from the current time (col. 5, lines 42-45);

initiating a transmission to a download source of the plurality of sources (col. 3, lines 45-51);

receiving a response to the transmission from the source (col. 3, lines 51-53);

storing the receipt time from the current time (col. 5, lines 42-45);

determining the latency of the source from the difference between the receipt time and the transmission time (col. 3, lines 56-58; col. 5, lines 42-49); and

selecting a source in reference to the latency speed of each of the plurality of sources (col. 3, line 66-col. 4, line 3).

21. Emens did not teach including a date with the transmission time or the receipt time. "Official Notice" is taken for the concept of recording the time and date is known and accepted in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to include the transmission date and receipt date because by doing so it would increase the alertness of Emens's system by allowing a user to monitor the transaction with the external network.

22. As per claims 16 and 19, Emens taught the invention substantially as claimed in claims 15 and 18 above. Emens further taught wherein source further comprises a source in a peer-to-peer network (i.e. data can be exchange freely between two computer) (col. 4, lines 19-22).

23. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens in view of Young, U.S. Patent 6,477,522 (hereinafter Young).

24. As per claim 4, Emens taught the invention as claimed in claim 1 above. Emens did not specifically teach that the performance includes throughput speed. Young taught that the performance includes throughput speed (col. 4, lines 54-57).

25. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Young because Young's method of obtaining the throughput speed would increase the accuracy of Emens's system by providing a better indication of an optimal server to request the content (col. 4, lines 54-57).

26. As per claim 9, Emens did not teach comprising a download speed. Young taught wherein the throughput speed further comprises a download speed (col. 1, lines 58-63).

27. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Young because Young's method of obtaining the throughput speed would increase the accuracy of Emens's system by providing a better indication of an optimal server to request the content (col. 4, lines 54-57).

Claims 21, 22, 23 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens in view of Andrews et al, U.S. Patent Application Publication 2002/0038360 (hereinafter Andrews).

28. As per claim 21, Emens taught the invention substantially as claimed for managing a plurality of sources comprising:

obtaining a list comprising a plurality of identification of sources (col. 3, lines 38-46);

initiating a plurality of connections, the plurality of connections further comprising one connection for each of the plurality of sources, yielding a plurality of initiated connections (col. 3, lines 48-51);

receiving a response for the each of the plurality of initiated connections, yielding a plurality of responses (col. 3, lines 51-53); and

selecting the fastest source of the plurality of sources in reference to a predetermined file size and in reference to the response (col. 3, line 66-col. 4, line 3).

(Note: It is inherent that the HTTP request must be in reference to a predetermined file size)

29. Emens did not teach socket connections. Andrews taught socket connections (i.e. three way handshake) could be measured for client accessing a content server (page 4, paragraphs 46 and 47).

30. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Andrews because Andrews's

method of measuring the socket connections would increase the efficiency of Emens's system by locating content servers in response to the minimal round trip time (page 1, paragraph 8).

31. As per claim 22, Emens and Andrews taught the invention substantially as claimed in claim 21 above. Emens and Andrews further taught wherein the selecting further comprises:

selecting the source associated with the response that is received first (col. 3, lines 47-58; col. 3, line 66-col. 4, line 6).

32. As per claim 23, Emens and Andrews taught the invention substantially as claimed in claim 21 above. Emens and Andrews further taught wherein the selecting further comprises:

measuring the latency of each of the plurality of sources (col. 3, lines 47-58); and

selecting a source in reference to the download speed of each of the plurality of sources (col. 3, line 66-col. 4, line 6).

33. As per claim 30, Emens taught the invention as claimed in claim 28 above. Emens did not specifically detailing the establishment of the socket connection comprising a TCP/IP synchronized idle message and a TCP/IP acknowledgment message. Andrews taught wherein the transmission further comprises a TCP/IP synchronized idle message (page 4, paragraph 47); and the response further comprises a TCP/IP acknowledgment message (page 4, paragraph 47).

34. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Andrews because Andrews's

method of comprising a TCP/IP synchronized idle message and a TCP/IP acknowledgment message would increase the capability of Emens's system by allowing establishment of a socket connection for accessing content on the server.

Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Emens in view of "Official Notice" as applied to claim 15 above, and further in view of Andrews.

35. As per claim 17, Emens taught the invention substantially as claimed in claim 15 above. Emens did not specifically detailing the establishment of the socket connection comprising a TCP/IP synchronized idle message and a TCP/IP acknowledgment message. Andrews taught wherein the transmission further comprises a TCP/IP synchronized idle message (page 4, paragraph 47); and the response further comprises a TCP/IP acknowledgment message (page 4, paragraph 47).

36. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Andrews because Andrews's method of comprising a TCP/IP synchronized idle message and a TCP/IP acknowledgment message would increase the capability of Emens's system by allowing establishment of a socket connection for accessing content on the server.

37. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Emens in view of Andrews as applied to claim 23 above, and further in view of "Official Notice".

38. As per claim 24, Emens and Andrews taught the invention substantially as claimed in claim 23 above. Emens further taught wherein measuring the latency further comprises:

storing the time of each of the plurality of initiating connection (col. 5, lines 42-45);

storing the time of each of the plurality of responses (col. 5, lines 42-45); and

determining the download speed of each of the plurality of sources from the differences between the time of each of the plurality of responses and the time of each of the plurality of initiating connections (col. 3, lines 56-58; col. 5, lines 42-49). Note that the download speed could be the throughput speed (i.e. or could be the throughput time if the size of the transmission and response is equal for each source tested according to the specification on page 17, lines 1-7) according to the specification, page 13, lines 1-4.

39. Emens did not teach socket connections. Andrews taught socket connections (i.e. three way handshake) could be measured for client accessing a content server (page 4, paragraphs 46 and 47).

40. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Emens and Andrews because Andrews's method of measuring the socket connections would increase the efficiency of Emens's system by locating content servers in response to the minimal round trip time (page 1, paragraph 8).

41. Emens and Andrews did not teach including a date with the time. "Official Notice" is taken for the concept of recording the time and date is known and accepted in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to include the transmission date and receipt date because by doing so it would increase the alertness of Emens's system by allowing a user to monitor the transaction with the external network.

CONCLUSION

42. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Green et al, U.S. Patent Application Publication 2002/0133816, disclosed a system for collecting data including transmission time and date.

Bakshi, U.S. Patent, disclosed a system for opening a socket connection using the three-way handshake.

Soles et al, U.S. Patent Application Publication 2002/0143918, disclosed a method of locating the closest peer providers of resources.

43. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Lee whose telephone number is (571)272-3967. The examiner can normally be reached on 8 AM TO 5:30 PM

Monday to Thursday and every other Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571)272-3964. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)350-6121.

P.L.

JOHN FOLLANSBEE
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